

8th Circuit Court of Appeals Ruling May Upend Data Breach Rules for Lawsuits

September 6, 2017 - To date, federal appeals courts around the country have been split on whether or not consumers can sue simply for having their information included in a data breach. The D.C. Court of Appeals has ruled that being included in a breach does give you standing to sue. But the 2nd and 4th Circuit Courts of Appeal have rules that unless you can prove that you've suffered a financial loss as a result of a data breach, you don't have standing to sue even if you can prove that your data was included in a breach. A new ruling from the US 8th Circuit Court of Appeals is likely to further muddy the waters. The court has decided that as long as a financial loss is claimed by plaintiffs, those plaintiffs have standing to sue even if they can't prove that their loss was directly related to a data breach.

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The 8th Circuit's ruling is probably best described through an example.

Let's say that your personally identifiable data was included in a data breach and that one month later there were unauthorized charges on one of your credit cards. Even if you can't prove that those charges were a direct result of the data breach, they would give you standing to sue in the 8th Circuit. That doesn't mean you will win however. The ruling from the court said that such claims would be better handled through a motion to dismiss the case. This means that once you get to court, if you still can't prove that your loss was as a result of the data breach, the case is likely to be dismissed by the presiding judge.

Even so, the ruling only adds confusion to the issue of "standing" in data breach lawsuits. Using the same example above, if you filed your lawsuit in Washington, DC, you would be able to sue and the case would be unlikely to be dismissed even if you can't show any losses directly attributable to the data breach. But in the 2nd and 4th Circuits, you wouldn't have standing to sue in the first place unless you could first prove a financial loss directly as a result of the data breach.

Eventually, the Supreme Court will probably decide the matter, but so far the court hasn't agreed to hear arguments in any of the cases winding their way through the courts. Until that happens, it is quite likely that attorney's will attempt to make their initial lawsuit filings in the Circuits that are friendly to them; namely the D.C and 8th Circuits.

by Jim Malmberg

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